BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Provision of Directory Listing Information Under the Communications Act of 1934, As Amended	)	CC Docket No. 99-273
	)	

PETITION FOR RECONSIDERATION OF THE ASSOCIATION OF DIRECTORY PUBLISHERS

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4 November 1999

SUMMARY

Although the enactment of section 222(e) and the Commission's implementation thereof go a long way in creating a level playing field for independent directory publishers, several modifications should be made to the rules adopted by the Commission to ensure that local exchange carriers ("LECs") can not exploit the rules and the Commission's Third Report and Order to engage in anticompetitive practices in the provision of subscriber list information ("SLI") to independent directory publishers.

To that effect, the Commission should:

(i) recognize an affirmative obligation for LECs to provide unpublished and unlisted subscriber information to competing publishers if they provide that information to their own publishing affiliates;

(ii) clarify that incumbent LECs may not discriminate between their own publishing affiliates and independent publishers in the provision of listings of competitive LECs ("CLECs") gathered pursuant to interconnection agreements with the CLECs;

(iii) reduce to seven days the period within which LECs must inform independent publishers that they cannot comply with a request for SLI, to assure that LECs do not abuse the current thirty-day limit and lengthen their competitors' wait for SLI to sixty days;

(iv) make clear that LECs may not use their publishing affiliates to avoid fulfilling their duties under section 222(e);

(v) modify the complaint procedure to provide interim relief allowing a publisher to pay the presumptively reasonable benchmark rates while a complaint is processed; and

(vi) guarantee that complaints will be given Accelerated Docket treatment or otherwise resolved within sixty days.

By modifying its rules, the Commission can ensure a level playing field in the directory publishing arena by removing opportunities for carriers to discriminate against competing publishers.

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PETITION FOR RECONSIDERATION OF THE ASSOCIATION OF DIRECTORY PUBLISHERS

The Association of Directory Publishers ("ADP"), by its attorneys, hereby petitions the Commission to reconsider portions of its Third Report and Order in the above-captioned proceeding.[1] Although ADP supports the conclusions of the Third Report and Order, modification of the rules adopted by the Commission in several discrete areas is warranted to ensure that local exchange carriers ("LECs") can not take advantage

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[1] In re Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Third Report and Order, FCC 99-227 (rel. Sept. 9, 1999)("Third Report and Order"). The Third Report and Order was published in the Federal Register on October 5, 1999. See 64 Fed. Reg. 53944 (Oct. 5, 1999).

of the rules as written to engage in anti-competitive practices in the provision of subscriber list information ("SLI") to independent directory publishers.

I. INTRODUCTION.

ADP is an international trade association that represents the interests of independent telephone directory publishers that publish white and yellow pages directories and compete with the affiliates of the LECs in the sale of telephone directory advertising. Although the enactment of section 222(e) and the Commission's implementation thereof will go a long way in creating a level playing field for independent publishers, several adjustments should be made to the rules adopted by the Commission to ensure that LECs, and particularly incumbent LECs ("ILECs"), are not permitted to exploit the rules to engage in anticompetitive practices.

Specifically, the Commission should:

(i) recognize an affirmative obligation for LECs to provide unpublished and unlisted subscriber information to competing publishers if they provide that information to their own publishing affiliates;

(ii) clarify that incumbent ILECs may not discriminate between their own publishing affiliates and independent publishers in the provision of listings of competitive LECs ("CLECs") gathered pursuant to interconnection agreements with the CLECs;

(iii) reduce to seven days the period within which LECs must inform independent publishers that they cannot comply with a request for SLI, to assure that LECs do not abuse the current thirty-day limit and lengthen their competitors' wait for SLI to sixty days;

(iv) make clear that LECs may not use their publishing affiliates to avoid fulfilling their duties under section 222(e);

(v) modify the complaint procedure to provide interim relief allowing a publisher to pay the presumptively reasonable benchmark rates while a complaint is processed; and

(vi) guarantee that complaints will be given Accelerated Docket treatment or otherwise resolved within sixty days.

II. LOCAL EXCHANGE CARRIERS HAVE AN AFFIRMATIVE OBLIGATION TO NOT DISCRIMINATE BETWEEN THEIR OWN AFFILIATES AND COMPETING PUBLISHERS IN THE PROVISION OF UNPUBLISHED OR UNLISTED SUBSCRIBER INFORMATION.

The Commission has determined that the definition of SLI in section 222(e) only covers information that the carrier or an affiliate has published.[2] Under that construction, the affirmative obligations included in section 222 would not apply to unpublished or unlisted subscriber information.[3] Nonetheless, in the Third Report and Order, the Commission determined that it may be an unreasonable practice for carriers to provide unpublished or unlisted information to its own affiliated publisher and not to competing publishers.[4] However, it seems clear that it will always be unreasonable and unreasonably discriminatory for a carrier to provide unpublished or unlisted information to its own publisher but not to a competitor.

A long history of Commission precedent bars carriers from acting in ways that discriminate against competitors. Sections 201 and 202 of the Act establish a ban on unreasonable or unreasonably discriminatory practices that covers a variety of situations.[5]

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2 Id. at ¶ 41. See 47 U.S.C. § 222(f)(3)(B).

3 Unlisted information is information that is available through directory assistance but not printed in the white pages directory. Unpublished information is information that is neither available through directory assistance nor printed in the white pages directory.

4 Third Report and Order, at ¶ 41.

5 47 U.S.C. §§ 201 and 202. Sections 201 and 202 are applicable to the provision of SLI because SLI is an instrumentality or facility that is incidental to a carrier's provision of local exchange service and therefore fits within the definition of wire

Section 201 requires that all practices in connection with communications services be just and reasonable, while section 202 forbids carriers from giving "any undue or unreasonable preference or advantage" to a particular class.[6]

Denying access to unpublished or unlisted subscriber information to competing publishers while providing access to affiliated publishers is the sort of anticompetitive, discriminatory practices contemplated by these sections. Denying this information to a competing publisher deprives the competitor of the ability to deliver directories to those subscribers on a timely basis and to sell advertising to businesses wishing to maximize access to their advertisements.[7] A publisher that can maintain exclusive information has an anticompetitive advantage over competing publishers. By failing to ban such discrimination, the Commission has created a circumstance in which costly and time-consuming complaint procedures will become a prerequisite to adequate competition in the directory publishing market. Given the ILECs' acknowledged "total control" of SLI,[8] and their penchant for exploiting this control by refusing access, charging excessive prices,

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(continued)

communication in section 3 of the Act. Id. § 153(52). SLI is "simply [a] repositor[y] of information that the LECs necessarily obtain in the course of doing business as local exchange service providers." In re Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Report and Order, 7 FCC Rcd. 3528, at ¶ 19 (1992).

6 47 U.S.C. §§ 201(b) and 202(a). See Third Report and Order, at ¶ 189.

7 Third Report and Order, at ¶ 41.

8 See H. Rep. No. 104-204(1), 104th Cong., 1st Sess., 89 (1995) (cited in Third Report and Order, at ¶ 3).

and "imposing unreasonable conditions,"[9] it is reasonable to expect that some ILECs will withhold this information for their own competitive advantage.[10]

The Commission has acknowledged that it is prepared to take action should carriers provide their own directory publishers with unlisted information but refuse to provide these data to competing publishers. Given the likelihood of such an occurrence and the expense to a competing publisher in obtaining relief when it does, the Commission would better serve competition by making the provision of unpublished and unlisted subscriber information to competing publishers an affirmative obligation when the information is provided to affiliated publishers.

III. INCUMBENT CARRIERS MAY NOT DISCRIMINATE BETWEEN THEIR OWN AFFILIATES AND COMPETING PUBLISHERS IN THE PROVISION OF LISTINGS OF COMPETITIVE CARRIERS GATHERED PURSUANT TO INTERCONNECTION AGREEMENTS WITH THESE CARRIERS.

The Third Report and Order states "that the obligation under section 222(e) to provide a particular telephone subscriber's [SLI] extends only to the carrier that provides that subscriber with telephone exchange service."[11] However, independent grounds exist

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9 Third Report and Order, at ¶ 3.

10 For example, in the Local Competition Second Report and Order, the Commission required ILECs to provide non-discriminatory access to telephone numbers to paging carriers. The Commission found that, although paging was not a telephone exchange service or telephone toll service under the Act, paging providers should not be placed at an unfair competitive disadvantage by the ILECs because of the prohibition against unreasonable discrimination in 202(a) and against unjust practices in 201(b). See In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order, 11 FCC Rcd. 19392, 19538, ¶ 330 (1996).

11 Third Report and Order, at ¶ 55. Although ADP disagrees with the Commission's interpretation of section 222(e), it does not seek reconsideration of that aspect of the Third Report and Order in this Petition for Reconsideration.

under the Act that require a carrier to provide this information to all directory publishers if it causes this information to be provided its own directory publishing affiliate. Specifically, under sections 201(b) and 202(a) of the Act, a carrier may not provide SLI obtained from CLECs to its own directory publishing affiliate if the ILEC does not also provide these data to independent directory publishers upon request.[12]

An ILEC's refusal to provide CLEC information to the unaffiliated publishers -- while providing or making it available to the ILEC's own directory-publishing affiliates -- is an unreasonable and unreasonably discriminatory practice under sections 201(b) and 202(a) of the Act. As discussed supra, in section II, the Commission stated that "section 222(e) does not require carriers to provide the names or addresses of subscribers with unlisted or unpublished numbers to independent publishers."[13] However, it also recognized that obtaining the names and addresses of subscribers with unlisted or unpublished numbers from carriers may be the most efficient way for independent directory publishers to deliver directories to those subscribers on a timely basis and thereby attract businesses that want to maximize access to their advertisements. Carriers, however, may wish to gain a competitive advantage by providing their own, but not competing directory publishers with information regarding subscribers with unlisted or unpublished numbers. The Commission recognized that, depending on the circumstances, such practices may be unreasonable or unreasonably discriminatory within the meaning of sections 201(b) and 202(a) of the Act.

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12 47 U.S.C. §§ 201(b) and 202(a).

13 Third Report and Order, at ¶ 41.

Similarly, the Commission has held that a refusal by BellSouth to provide unaffiliated entities with all of the listing information that it uses to provide reverse directory services would be "unjustly or unreasonably discriminatory."[14] In that case, the Commission was considering whether BellSouth's refusal to provide to unaffiliated entities listings for subscribers of other LECs that BellSouth uses to provide its own reverse directory services was unreasonable or unreasonably discriminatory under section 10(a)(1) of the Act.[15] The Commission recognized that "BellSouth obtained directory listings from other LECs for use in its directory assistance services solely because of its dominant position in the provision of local exchange services throughout its region."[16] The Commission found that this circumstance indicated "that BellSouth has competitive

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14 In re Bell Operating Companies Petitions for Forbearance From the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities, CC Docket No. 96-149, Memorandum Opinion and Order, 13 FCC Rcd. 2627, at ¶ 82 (1998)("Reverse Directory Order"). In the Reverse Directory Order, the Commission decided to forbear from applying the separate affiliate and other requirements of section 272 to BellSouth's provision of interLATA reverse directory services, subject to BellSouth meeting certain conditions, including the condition that BellSouth provide its competitors access to all listing information it uses to provide such services, including listings of other carriers. Id.

15 47 U.S.C. § 160(a)(1). Section 10(a)(1) provides the Commission with regulatory authority to forbear from applying any regulation or provision of the Act to a telecommunications carrier or service if certain conditions are satisfied. Id. One condition that the Commission must consider is whether enforcement of the provision is necessary to ensure that the practices by, for, or in connection with the telecommunications carrier or service are not "unjustly or unreasonably discriminatory." Id. Thus, the FCC's interpretation of the term "unjustly or unreasonably discriminatory" pursuant to section 10(a)(1) is also applicable to section 202(a) of the Act, which similarly prohibits "unjust and unreasonable discrimination" by a carrier. Id. § 202(a).

16 Reverse Directory Order, at ¶ 81.

advantages in the provision of reverse directory services within its region."[17] Accordingly, "[t]hese advantages will persist if BellSouth continues to deny unaffiliated entities access to all of the listing information that it uses to provide reverse directory services or if BellSouth fails to provide such access at the same rates, terms, and conditions, if any, that it charges or imposes on itself."[18] Therefore, the Commission concluded that it would be "unjustly or unreasonably discriminatory" to permit BellSouth to continue to deny competitors access to all the listing information it uses to provide reverse directory services, including the listings of other LECs.[19]

The same principles of reasonableness and nondiscrimination apply, in the context of directory publishing, to SLI that ILECs gather from CLECs pursuant to interconnection agreements with the CLECs. ILECs gather these listings solely because of their position as the dominant providers of local exchange services; because the ILECs have the "vast majority of access lines" within their regions, "it is to the advantage of independent LECs and competitive LECs to have the listings of their customers included in" the ILECs' listings databases.[20] While these listings are made available to the ILECs' directory publishing affiliates, a few ILECs refuse to provide them to independent directory publishers.[21] To obtain complete SLI, independent publishers must identify and contact

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17 Id. at ¶ 82.

18 Id.

19 Id.

20 Id. at ¶ 81.

21 For example, BellSouth refuses to provide CLEC listings to independent directory publishers unless the CLEC has amended its interconnection agreement with BellSouth to specify that BellSouth will provide the CLEC's listings to independent

each CLEC with subscribers in a given geographic area, a process that is both costly and time consuming for the publishers and the CLECs.[22] Moreover, many CLECs are incapable of providing complete, accurate, and reliable SLI to independent publishers in a timely manner or a usable format.[23] By contrast, the ILECs' databases of subscribers already contains complete information concerning CLECs' subscribers.[24]

Some ILECs claim that they cannot provide CLECs' listings to independent publishers because they have not obtained the CLECs' consent. However, the Commission has resolved a similar concern in the Reverse Directory Order. There, the

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(continued)

directory publishers. However, BellSouth's interconnection agreements with most CLECs have long provided that BellSouth's directory-publishing affiliate BellSouth Advertising and Publishing Company ("BAPCO") has access to these listings. BellSouth's directories advert to this fact, boasting that they "include[] customer listings for all local telecommunications companies." Other ILECs will provide CLECs' SLI to independent publishers upon request, but require publishers to identify each CLEC and obtain the CLECs' consent for the ILEC to provide the listings in a form that is agreeable to the ILEC. This process can be lengthy and inefficient, as the publisher must essentially act as the middleman in negotiating between the ILEC and the CLEC. Often, publishers will be unable to obtain the consent of the CLEC in time to include the CLECs' listings in their directories.

22 See Ex Parte Filing of ADP in CC Docket No. 96-115 (filed Feb. 16, 1999).

23 Id.

24 See In re Petition of U S WEST Communications for a Declaratory Ruling Regarding Provision of National Directory Assistance, CC Docket No. 97-172, Memorandum Opinion and Order, FCC 99-133, at ¶ 35 (rel. Sept. 27, 1999) (Because of US WEST's dominance in the local exchange and exchange access markets throughout its region, "U S WEST's directory assistance databases include the telephone numbers of U S WEST customers as well as the telephone numbers of independent LECs and competitive LECs operating in U S WEST's region. Consequently, U S WEST has access to a more complete, accurate, and reliable database than its competitors.").

Commission observed that "[b]ecause BellSouth is not legally obligated to provide reverse directory services, it can comply with any duty it has not to disclose listing information obtained from other LECs by declining to use that information in its own interLATA reverse directory services."[25] Similarly, if an ILEC does not wish to provide CLEC s' SLI to independent directory publishers, it could simply decline to provide these data to its directory publishing affiliate. As the Commission has stated, section 222(e) does not require that a LEC provide directory publishers with the listings of other LECs' subscribers. Moreover, even if an ILEC is required by state law to include CLECs' listings in its directory, the ILEC could simply include other directory publishers in the consent obtained from the CLEC to provide the CLEC's listings to its own directory publishing affiliate.[26]

Thus, an ILEC's practice of refusing to provide CLEC information to independent directory publishers is unreasonable and unreasonably discriminatory under sections 201(b) and 202(a) of the Act, respectively. The Commission should clarify on reconsideration that ILECs must provide CLECs' listings gathered pursuant to interconnection agreements with CLECs to independent directory publishers upon request. The rates for these listings should be based on the carrier's costs to provide them; the presumptively reasonable benchmark rates already established by the Commission provide

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25 Reverse Directory Order, at ¶ 84. CLECs that do not publish their own directories desire that ILECs include their subscribers in the ILECs' directories because in many states, providing a directory listing is considered part of providing local telephone service. See, e.g., Fla. Stat. Ann. § 364.02 (1998); Tex. Utilities Code Ann. § 51.002 (West 1997).

26 Because CLECs desire that ILECs include their subscribers in the ILECs' directories, it is not likely that they will object to such a condition.

a fair proxy for these costs. Alternately, the Commission should prohibit carriers from providing these data to their own directory publishing affiliates if they will not provide them to independent directory publishers.

IV. NOTIFICATION THAT AN SLI ORDER CANNOT BE ACCOMMODATED SHOULD BE GIVEN WITHIN A SHORTER PERIOD OF TIME THAN THIRTY DAYS.

Under the Third Report and Order, carriers are given thirty days to inform publishers that a request cannot be accommodated because of the delivery schedule, level of unbundling, or format requested.[27] However, because carriers generally are able to make this determination much more quickly, it is not necessary to provide them with thirty days to determine that they are unable to comply with the request. In fact, permitting a carrier to wait up to thirty days before notifying a publisher that its request can not be accommodated will permit the carrier to delay unreasonably the provision of SLI to unaffiliated publishers to gain a competitive advantage.

Retaining the thirty-day period allows carriers to use the time lapse as an anticompetitive device. Under the current rule, a carrier has thirty days following a request for listings to inform a publisher that the format requested is not available and to offer alternative formats.[28] The carrier can then require the competitor to wait an additional thirty days before receiving the requested information.[29] Thus, the publisher may be required to wait up to sixty days, or longer, for the information. This is an

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27 Third Report and Order, at ¶ 66.

28 Id.

29 Id. at ¶ 62. This is the case because a publisher must provide a carrier with at least thirty days' advance notice of a request for SLI. Id.

unreasonable amount of time to require publishers to wait for SLI. A carrier -- which can be expected to be familiar with its own listing offerings -- can easily ascertain within seven days that the format requested is not available. When this is the case, the carrier should be required to communicate that fact to the publisher and provide alternative formatting options within seven days.

V. CARRIERS ARE UNABLE TO AVOID THEIR STATUTORY DUTY BY SHIFTING SLI REQUIREMENTS TO AN UNREGULATED AFFILIATE.

The Commission should make clear that carriers may not use their unregulated publishing affiliates to avoid fulfilling their duties under section 222(e). Carriers frequently contract their publishing services to unregulated affiliates and third parties. Following the release of the Third Report and Order, several carriers have expressed a belief that, while the carrier itself is required to comply with section 222(e) and the Commission's rules, the publishing branch of the carrier's holding corporation is not. Citing this argument, these LECs have refused to comply with section 222(e) and the accompanying rules.

For example, White Directory Publishers, Inc. ("White"), has routinely contracted with ALLTEL Publishing, Inc. ("ALLTEL Publishing"), to receive SLI at 50 cents a listing. Because White has long viewed this price as being in excess of ALLTEL Publishing's costs, White notified ALLTEL Publishing of its obligation to adhere to a reasonable, cost-based pricing structure under section 222(e) and the Commission's rules. ALLTEL Publishing responded that it was not a telecommunications carrier and was therefore not subject to section 222(e). It indicated that White should discuss the issue with ALLTEL Corporation, the holding company for both the publishing and those

ALLTEL subsidiaries which provide local exchange services on a common carrier basis.[30] ALLTEL Publishing and the common carrier subsidiaries are all wholly owned by ALLTEL Corporation.

Previously, an employee of ALLTEL Corporation represented that ALLTEL Corporation could supply SLI to White. However, it would do so only at ten cents a listing, well above the four cents that the Commission found to be a reasonable benchmark. In addition, ALLTEL Corporation warned that the information received from it would be in "raw data" form, not in the publishable format offered by its publishing subsidiary, ALLTEL Publishing. ALLTEL Corporation would not elaborate on what it meant by "raw data."

It is not uncommon for carriers to attempt to avoid their statutory obligations in this manner. The Commission can easily dispel this misunderstanding by clarifying the rules in this area. To that effect, both the provisions of the Act and a multitude of court cases indicate that a carrier may not avoid its obligations by using an affiliate.[31] Moreover,

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30 See Letter from Steve Gidorkis, ALLTEL Publishing, Inc., to Dolores Wagner, White Directory Publishers, Inc., dated Oct. 13, 1999, attached hereto as Exhibit A.

31 Section 217 of the Act requires that the acts of a carrier's agent be treated as the acts of the carrier for purposes of construing and enforcing the Act. 47 U.S.C. § 217. See also General Tel. Co. of the Southwest v. United States, 449 F.2d 846, 855 (5th Cir. 1971)(stating that "where the statutory purpose could thus be easily frustrated through the use of separate corporate entities, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purposes of regulation"); US West Communications, Inc. v. Colo. Pub. Util. Comm'n, 978 P.2d 671, 677 (Colo. 1999)(stating that "a regulated monopoly may not evade regulatory requirements simply by contracting a service with a non-regulated third party"); North Carolina ex rel Utils. Comm'n v. So. Bell Tel. and Tel. Co., 391 S.E. 2d 487, 488 (N.C. 1990)(finding Southern Bell liable for incorrect listings in a directory published by BellSouth Advertising and Publishing Co.).

it seems unlikely that Congress intended to create such a gaping loophole. Indeed, section 222(f)(3)(B) defines SLI as information "that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."[32] Thus, a carrier cannot avoid it obligations by providing SLI through a subsidiary or third party. Moreover, a carrier may not intentionally degrade the quality of the SLI provided, with no valid business justification. However, carriers are in fact attempting to do just that, indicating that the Commission should further clarify this requirement.

VI. COMPLAINT PROCEDURES SHOULD BE ESTABLISHED THAT BETTER PROTECT THE INTERESTS OF COMPETING PUBLISHERS.

A. Publishers Should be Allowed to Pay the Benchmark Rates While a Complaint is Pending.

Under section 4(i) of the Act, the Commission has the authority to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."[33] This grant of authority has been interpreted to include the ability to order interim relief.[34] Therefore, the Commission has the ability to order interim relief as needed to enforce the provisions of section 222(e).

The complaint procedures for unreasonable rates under section 222(e) are outlined in section 208 of the Act and in the Commission's rules.[35] The Commission has concluded

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32 47 U.S.C. § 222(f)(3)(B) (emphasis added). An affiliate is defined in section 3(1) of the Act as any entity owned or controlled by another entity. 47 U.S.C. § 153(1).

33 47 U.S.C. § 154(i).

34 See United States v. Southwestern Cable Co., 392 U.S. 157, 180 (1968).

35 See 47 U.S.C. § 208; 47 C.F.R. § 1.711 et seq.

that interim relief will be awarded under section 208 based on the following criteria: (i) the likelihood of success on the merits, (ii) the threat of irreparable harm absent a grant of preliminary relief, (iii) the degree of injury to other parties if relief is granted, and (iv) whether the issuance of the order is in the public interest.[36]

These requirements can easily be met in a complaint proceeding for unreasonable rates. First, the Commission has adopted presumptively reasonable benchmark rates for the provision of SLI. Therefore, the likelihood of success on the merits will be high if a carrier chooses to charge a higher rate. Second, if publishers are prevented from purchasing SLI because the carrier's rate exceeds the benchmark, their directories will be less accurate that the affiliate's directory. The resulting loss of customers and goodwill will irreparably harm competing publishers. Third, the degree of injury to the carrier will not be great because a publisher will merely pay the difference between the higher charge and the benchmark if the higher charge is found to be appropriate. Finally, this relief will serve the public interest because it will promote competition in the directory publishing market, which was Congress's central goal in enacting section 222(e).[37]

Although this interim relief may be evaluated on a case-by-case basis when a complaint is filed, it would be much more efficient and consistent with Congress's intent for the Commission to specify in an order that this interim relief will be routinely granted.

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36 See AT&T Corp. v. Ameritech Corp. and Qwest Communications Corp, 13 FCC Rcd. 14508, 14514 (1998). These four criteria were initially set forth in Virginia Petroleum Jobbers Assoc. v. FPC, 259 F.2d 921 (D.C. Cir. 1958).

37 Third Report and Order, at ¶ 3.

B. The Commission Should Guarantee Publishers' Complaints Accelerated Docket Treatment or Should Set a Goal of Resolving Such Complaints Within Sixty Days.

The Commission has repeatedly "recogniz[ed] the importance of swift and vigorous enforcement of the rules for competition."[38] In the Third Report and Order, the Commission specified that it will use all available enforcement techniques, including potentially the Accelerated Docket, to expedite resolution of rate disputes requiring regulatory intervention.[39] However, this statement would be much more effective if it were backed up with a guarantee to accelerate the proceedings. The Commission can do so by ensuring that a rate complaint is always given the accelerated docket treatment, or, alternatively, by guaranteeing that the complaint proceeding will be completed within sixty days.

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38 See Commission Initiates Review of Formal Complaint Process, News Report, CC Docket No. 96-238, released Nov. 26, 1996.

39 Third Report and Order, at ¶ 74.

VII. CONCLUSION.

For the foregoing reasons, ADP urges the Commission to reconsider its rules issued in the Third Report and Order and make modifications consistent with the proposals outlined above.

Respectfully submitted,

THE ASSOCIATION OF DIRECTORY PUBLISHERS

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Its Attorneys

4 November 1999

CERTIFICATE OF SERVICE

I, Sophie J. Keefer, do hereby certify that on this 4th day of November, 1999, copies of the foregoing Petition for Reconsideration of the Association of Directory Publishers were hand delivered to the following parties:

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Chairman
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The Honorable Susan Ness
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Sophie J. Keefer

EXHIBIT A

ALLTEL PUBLISHING
100 Executive Parkway
Hudson, OH 44236
330-650-7100

Steve Gidorkis
Vice President - Production
330-650-7677

October 13, 1999

White Directory Publishers, Inc.
Attn: Dolores Wagner
1945 Sheridan Drive
Buffalo, NY 14223

VIA CERTIFIED MAIL

Dear Ms. Wagner:

Your letter to ALLTEL regarding the recent FCC ruling on Section 222(e) of the Telecommunications Act of 1996 has been improperly addressed to ALLTEL Publishing. As you probably realize, the FCC order was directed at telecommunication providers. ALLTEL Publishing is not a telecommunications provider, and therefore is not subject to the provisions of this order. Further correspondence on this issue may be addressed to:

ALLTEL Corporation
One Allied Drive
Little Rock, AR 72202

Attn: Alfred Busbee

Regards,

Steve Gidorkis
Vice President – Production

Cc: Ken Beach
Alfred Busbee